

Case #3694 (09/01/00)

**NORTHLAND CRANBERRIES, INC.**

**Northland Juices**

*Advertising Agency Unknown*

- An advertiser can compare two dissimilar products even if a competitor makes a more similar product, so long as the objects of the comparison are clearly identified in the advertisement, and there is no implication that the comparison is to the competitor's more similar product, or that the competitor does not make a more similar product.
- In the absence of evidence demonstrating that consumers are taking away a misleading message, a qualifying disclosure, printed in the body of an advertisement, in a contrasting color and type size that is easy to read, is clearly and adequately disclosed.

#### **BASIS OF INQUIRY**

Television and point-of-purchase advertising for Northland Cranberries, Inc.'s ("Northland") Northland Juices was brought to the attention of NAD by Ocean Spray Cranberries, Inc. ("Ocean Spray") manufacturer of Ocean Spray juice products.

Ocean Spray challenged two versions of a television commercial that opens with some old footage of Albert Einstein, with a dubbed voice stating: "Choosing cranberry juice is confusing." In the original version of the commercial, the announcer, reading from the Ocean Spray label, states: "Premium, cocktail, 27% juice, corn syrup?" The visuals show a partial view of the ingredient list for Ocean Spray Juice Cocktail, including the words "Fructose Corn Syrup." Then, changing to a shot of the Northland label, the announcer states: "Avoid the confusion. Trust Northland to always be 100% juice." Albert Einstein concludes: "Northland juice is pure genius." The closing voice-over states "Northland, always 100% juice."

In the revised version, the voice-over states "100% juice cocktail, 27% juice, corn syrup." The remainder of the commercial is the same as the original version.

Ocean Spray also challenged the point-of-purchase print advertisement ("shelf-talker") that contained the statement "**ALWAYS DEMAND 100% JUICE**" and depicted two glasses side-by-side, one filled ¼ full and labeled "Ocean Spray Cranberry Juice Cocktail" – "27% Juice", and the other completely filled and labeled "Northland 100% Juice."

#### **CHALLENGER'S POSITION**

Ocean Spray argued that both versions of the commercial are misleading because they imply that all Ocean Spray cranberry juice drinks (Ocean Spray Premium 100% juice drinks and Ocean Spray Cranberry Juice Cocktails) contain only 27% juice and are sweetened with fructose corn syrup. The challenger conceded that this is true with respect to Ocean Spray Cranberry Juice Cocktails, but Ocean Spray Premium 100% Juice products contain 100% fruit juice, and have no added sugar or fructose corn syrup. The challenger submitted the ingredient lists on Ocean Spray Premium 100% Juice product labels as confirmation that this line of products contain 100% fruit juice, with no added sugar or fructose corn syrup.

As support for its position that the commercials are misleading, the challenger submitted the results of a consumer perception study it commissioned that tested the original version of the television commercial.<sup>1</sup> The study included 275 participants in a control group<sup>2</sup> and 112 participants who were shown the commercial and were administered a diagnostic questionnaire immediately after exposure. Both the control group and test group were read a series of brand identification statements about Ocean Spray products and given the choice of either: a) completely agreeing; b) agreeing somewhat, or; c) not agreeing at all. The challenger stated that, after comparing the responses of the test group with the control group to the statements below, that it was clear that the Northland commercial was causing significant consumer confusion.

<u>Statement</u>	<u>Test Sample</u> <u>(112)</u>	<u>Control Group</u> <u>(275)</u>
Ocean Spray does not have a 100% cranberry juice product	26%*	12%
All Ocean Spray cranberry juice contain corn syrup	25%*	8%
Ocean Spray Premium 100% juices contain corn syrup	21%*	8%
Ocean Spray Premium 100% juices contain 27% juices	15%*	8%

\* Signifies a significant difference from the control group at a 90% confidence level

In addition, according to Ocean Spray, the study demonstrated that the Northland commercial is “unfairly casting doubt on the trustworthiness of Ocean Spray” as was evident in the 9% drop-off in the number of respondents who, after reviewing the commercial, strongly agreed with the statement “Ocean Spray is a brand you can trust”.

Upon learning that Northland had discontinued the two television commercials prior to the date of the commencement of the challenge, Ocean Spray agreed with the advertiser that so long as the commercials were, in fact, permanently discontinued, “the complaint regarding the commercials is not appropriate for review under Section 2.2 (B)(i) of the NAD/NARB Procedures.”

Point-of-Purchase Advertisement: With respect to the challenged shelf-talker, Ocean Spray noted that its 100% juice products are typically located next to Northland’s juices on grocery shelves. In that context, the challenger argued, the point of purchase advertisement was likely to mislead consumers into believing that all Ocean Spray products, not just Ocean Spray Cranberry Juice Cocktails, contain 27% juice. The challenger noted that the “Cranberry Juice Cocktail” qualifier appears in very small print and is therefore not likely to be read by consumers. Therefore, consumers are likely to take away the false impression that all Ocean Spray products contain only 27% juice.

The challenger disagreed with Northland’s argument that consumers in a grocery store typically take the time to read fine print when presented with labels and shelf talkers of many competing brands. Moreover, the challenger asserted, the false impression conveyed by the shelf talker is reinforced by the word “ALWAYS” in the headline. Ocean Spray maintained that, in its presented context, the headline communicates to consumers that Northland products are always 100% juice and that all Ocean Spray products are always 27% juice, when that is not the case.

Ocean Spray also cited a section of the Better Business Bureaus Code of Advertising, which states “The composition and layout of advertisements shall be such to minimize the possibility of misunderstanding by the reader.”<sup>3</sup> Moreover, Ocean Spray argued, qualifying information, such as information referenced by asterisks, “should be clearly and prominently disclosed,”<sup>4</sup> and that Northland’s shelf-talker does not meet this standard.

The challenger rejected Northland’s assertion that Ocean Spray is causing the consumer confusion because it manufactures, sells and promotes *under the same brand name* both its new 100% premium cranberry juice blends (which contain 100% juice) and its long established cranberry cocktail and drink blends, which do not. Ocean Spray contended that the brand name of its new line of juices is *Ocean Spray Premium 100% Juice*, which is not the same as its long-established cranberry cocktail drink blends which are marketed under the brand name *Ocean Spray Cranberry Juice Cocktail*. The challenger stated that each brand is clearly identified on the product labels, and the two lines are marketed much differently.

Lastly, in response to Northland’s argument that the challenger must prove actual consumer confusion, Ocean Spray contended that no such evidence is necessary because it is well-established that NAD can rely on its own expertise to determine the reasonable messages conveyed by advertising without extrinsic consumer perception data.

#### ADVERTISER’S POSITION

At the outset of the challenge, the advertiser informed NAD that both versions of the challenged television commercial had been discontinued at the end of 1999 and represented that Northland “does not intend to run either ‘Einstein’ commercials again.” Accordingly, because the commercials were withdrawn well before the Ocean Spray challenge was commenced, Northland maintained that pursuant to 2.2 (B)(i) of the NAD/NARB Procedures, the television advertising is not appropriate for NAD review.

Notwithstanding this jurisdictional defense, Northland also defended its claims on the merits and argued that both versions of its television commercial are truthful, and were designed to clearly and accurately remind consumers who are confronted with many different cranberry juices/drink products, that different products contain varying amounts of fruit

juice. The advertiser noted that Ocean Spray manufactures and promotes, under the same brand name, both its new premium 100% cranberry juice blends (which contain 100% juice) and its long established cranberry cocktail and drink blends. The cocktail blend drinks contain a high amount of fructose corn syrup, water and a varying percentage of juices. The challenger asserted that its advertising simply, unambiguously and accurately informs consumers that Northland brand cranberry juice blends are always 100% juice.

Point-of-Purchase Advertisement: In defense of its point-of-purchase advertisement, the advertiser stated that the shelf-talker's content is consistent with the FTC's long standing policy of encouraging the naming of competitive brands and identifying useful information to aid the consumer in making rational purchasing decisions.

The advertiser pointed out that Ocean Spray is not challenging the accuracy of the claim that "Northland brand cranberry juice blends are always 100% juice" or the fact that Ocean Spray cranberry juice cocktails are made with only 27% juice. It merely asserts that consumers are likely to take away the inaccurate message that all Ocean Spray products contain 27% juice. Northland rejected the challenger's argument that consumers are not likely to read the qualifying language and maintained that the shelf location of the two products is irrelevant because the qualifier "Cranberry Juice Cocktail" is clearly and conspicuously disclosed on the shelf-talker. Northland added that the disclosure print is easily readable, appears in a contrasting white font on a red background and is placed directly below the Ocean Spray logo, without any intervening graphics or print. Moreover, the reference is not isolated, or otherwise buried in other print out of context and, the shelf-talker appears in the grocery isle where consumers generally take the time to read labels, ingredients, pricing and other pertinent information.

Finally, Northland noted that Ocean Spray has not presented any evidence to support its position that consumers are misunderstanding the express message or taking away the implicit message suggested by Ocean Spray. If anything Ocean Spray has served to confuse consumers about the ingredients in Ocean Spray drink products, Northland asserted, and it is the challenger's decision to market its long time blended drinks and its new 100% juice product, under the same brand name.

#### DECISION

In light of the fact that the television advertisements were discontinued before the commencement of this challenge, and the advertiser's representation it has no intention of using the commercials in the future, NAD agreed that, pursuant to Section 2.2 (B) (i) of the NAD/NARB Procedures, Northland's television advertising is not appropriate for NAD review. Consequently, the sole issue before NAD is the message conveyed by Northland's comparative point-of-purchase advertisement.

It is well established (by prior NAD decisions) that an advertiser can compare two dissimilar products, even if a competitor makes a more similar product, so long as the objects of the comparison are clearly identified in the advertisement, and there is no implication that the comparison is to the competitor's more similar product, or that the competitor does not make a more similar product.<sup>5</sup> Here, NAD determined that Northland had clearly limited the comparison of its cranberry juice blend to Ocean Spray's line of Cranberry Juice Cocktails, because the object of the comparison is conspicuously disclosed in the point-of-purchase advertisement.

In reaching its decision, NAD considered several factors. First, unlike a broadcast advertisement where disclosures are sometimes flashed on the screen for only a few seconds, the challenged shelf talker is posted at the point of purchase where consumers can, and often do, take time to read shelf displays and compare product labels. Moreover, the comparison points out a truthful difference in juice content, which is relevant product information that is important to many shoppers. NAD also considered the fact that the qualifying disclosure appeared in the body of the advertisement, printed in a contrasting color and in a type size that is easy to read. Therefore, in the absence of any evidence demonstrating that consumers are taking away a misleading message, NAD concluded that the qualifying language was sufficient to limit the claim.

#### CONCLUSION

NAD concluded that the qualifier in advertiser's point-of-purchase advertisement, was clearly and conspicuously disclosed and therefore, in the absence of any evidence of consumer confusion, sufficient to limit its comparison of its 100% juice drinks to the challenger's line of juice blends.

#### ADVERTISER'S STATEMENT

"Northland Cranberries, Inc. appreciates the opportunity to participate in the self-regulatory process and NAD's thorough and considered resolution of this case. Northland firmly believes the consumer is entitled to receive relevant truthful information about competing products, particularly when competitors such as Ocean Spray continue to market products with significantly varying juice contents under the same brand name." (#3694 PCM, closed 8/4/00)

## NOTES

1. The sample was controlled by quota to ensure proportional representation of the four U.S. Census regions (Northeast, North Central, South and West).
2. Respondents in the control sample answered selected questions without exposure to any program or test material for comparison with responses from the test sample.
3. BBB Code of Advertising, Section 10
4. Id at Section 11.
5. See Campbell Soup Company, NAD Case Reports, June 1996 (#3302) and Campbell Soup Company, NAD Case Reports, March 1997 (#3373).